

**CODE ENFORCEMENT OFFICE**

645A Pine St, PO Box 849
Burlington, VT 05402-0849

VOICE (802) 863-0442

FAX: (802) 652-4221

TO: Development Review Board
FROM: Jeanne Francis, Zoning Spécialiste, Code Enforcement Office
DATE: October 4, 2011
RE: Report on Appeal of Zoning Administrator's Decision of Complaint Decision dated August 15, 2011, ZV # 216954, for Premises Located at 384 North Street, Burlington, Vermont. AP 12-0180

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Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Location: 384 North Street, Burlington, Vermont

Tax Lot # 045-1-065-000

Appellant: Caryn Long and Paul Bierman

Zoning Violation # 216954

Applicable Regulations: Comprehensive Development Ordinance Article 2, Sections 12.2.1 & 12.2.2

Background Information:

Sept. 2, 2005 Complaint alleging "triple-wide" parking on lawn; work order issued and assigned to inspector for investigation. Triple front yard parking confirmed. Subsequent follow up patrol visits did not yield any actual car parked on the lawn." Violation indicated as resolved by Code Director at that time - Sept. 27, 2005.

Sept. 7, 2005 Complaint re: parking on lawn. Site visit & photos by Code Enforcement on Sept. 21, 2005. Sept. 30, 2005 "Show Cause" letter sent to owner and notice of the violation issued. Owner responded by proposing to document the parking space has been in existence for a consecutive period of 15+ years. Owners to provide sufficient documentation by October 10 or remove the violation as stated in "Show Cause" letter, or obtain zoning approval. No further action indicated (possibly as follow up being undertaken with regard to Sept. 2 complaint). File closed.

Sept. 25, 2006 complaint filed: increasing parking area to the south of the single width driveway (onto grass area). In researching this complaint Code realized the 15+ year period from the 2005 complaints were never verified. Notice of Violation sent. In response documentation submitted: 1988 and 2004 aerial photos. Review of aerial photos resulted in determination that one vehicle has parked in the area for at least 15 years.

August 3, 2011 Complaint that double parking continues. After review of file determined that 2005 – 2006 an identical complaint was found to be unenforceable due to statutory time limitations. In this case, the City looked at aerial photographs, conducted site visits, reviewed City files and affidavits and other statements including but not limited to a prior property owner.

August 30 2011 Appeal of determination filed by complainants.

Notice of Decision Dated August 15, 2011:

The subject complaint filed Aug. 3 alleges increased parking area without zoning approval. Investigations and review of materials previously submitted determined an identical complaint was unenforceable due to the 15 year statutory time limitations. No new documentation that parking as per the 2005 and 2006 determinations

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had either expanded or cease for any period of time was provided by complainants. Thus, without any additional evidence the parking violation remained unenforceable.

Appeal Application:

This appeal was filed in a timely manner (August 30, 2011) as required under Article 12 of the zoning ordinance and Ch 117 T.24 §4465 of the Vermont State Statutes (15 days from the date of decision).

Section 12.2.1 Interested Persons

It is questionable whether the Appellants meet the Interested Persons criteria. Sec. 12.2.1 states: *For the purposes of this ordinance, an interested person means any one of the following:*

- (a) person owning title to property affected by a bylaw...*
- (b) The City of Burlington or any municipality ...*
- (c) A person owning or occupying property in the immediate neighborhood of a property which is the subject of any decision or act taken under the ordinance, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or bylaw of that municipality;*
- (d) Any ten persons owning real property within the city or an adjoining municipality who, by signed petition to the DRB, the plan or bylaw of which is at issue in any appeal brought under this article, allege that any relief requested by a person under this article, if granted, will not be in accord with the policies, purposes or terms of the plan or bylaw of the city. Such a petition must designate one person so serve as a representative of the petitioners regarding all matters related to the appeal*
- (e) Any department and administrative subdivision of the State of Vermont ...*
- (f) The Burlington Conservation Board.*

The appellants could be considered as an interested party if they own property in the immediate neighborhood and *can demonstrate a physical or environmental impact on their interest* as per Sec. 12.2.1 (c). One appellant lives at the top of Henry Street, one block from 384 North Street; and the other lives on the top Brookes Ave, 3 blocks away. The DRB has not in the past made any interested party determinations leaving such decisions to the Superior Court level.

Sec. 12.2.2: Appeals of Administrative Officer Decisions.

The relief requested by the appellant is to overturn the decision that front lawn parking at the subject premises is an unenforceable violation.

Findings:

- September 2005 complaints were submitted to Code Enforcement that alleged three vehicles were parked side-by-side thus increasing the parking area; investigations were undertaken; inspectors observed one car parked and lawn damage off the driveway; the Code Enforcement director at that time viewed the complaint as a housing complaint. A show cause memo was sent to Owner; owner responded with evidence of parking existing for a period of 15+ years, the Director closed the file. Determination made that use of the space south of driveway was an unenforceable violation, and that the second space south of driveway to be removed.
- September 2006 an increased parking complaint was filed with Code Enforcement.; complaint verified;

notice of violation issued. Owner re-submitted supporting documentation from 2005. Decision was that complaint unfounded reiterating determination of 2005.

- 2011 increase parking area complaints filed. City staff reviewed file material; no new evidence provided to determine a new violation occurred by expansion of the parking area beyond the current “unenforceable” situation. Complaint unenforceable letter issued and mailed to Appellant. Appellant appealed decision.

Article 2. Enforcement

The Code Enforcement Office received parking related complaints at the subject property several times over the years. Owners were notified of the complaint and submitted sufficient evidence that one parking space south of the driveway was in existence for a period of time so that as a violation it is unenforceable. However, the second space south of the driveway (i.e. third parking space) was in violation. Over the years Owners and/or tenants have not used the third space for parking. Appellant’s complaint was in reference to the first parking space south of the driveway which has been determined to be unenforceable. Appellant disagrees with decisions and has appealed the zoning administrator’s determination.

Summary

Code Enforcement Office recommends the DRB uphold the decision of 2011 that due to lack of any evidence to the contrary, the previous determination of the City remains regarding the first parking space to the south of driveway, which can, at this time, remain as an unenforceable violation, and that the 2nd space south of driveway is to be removed, which has been accomplished.

POCO Ventures
P.O. Box 272
Hinesburg, VT 05461

RECEIVED

SEP 23 2011

DEPARTMENT OF
PLANNING & ZONING

September 21, 2011

Ken M. Lerner, Zoning Administrator
City of Burlington Department of Planning & Zoning
City Hall
149 Church Street
Burlington, Vermont 05401

RE: Parking Space at Residential Property Owned by POCO Ventures
384 North Street, Burlington

Dear Mr. Lerner:

We are responding to the appeal by Ms. Long and Mr. Bierman of Henry Street regarding the grandfathered parking space at the property we own at 384 North Street. We have several objections to this appeal.

First, an appeal is untimely. The City has reviewed this case several times over the years and each time has decided that the parking space is grandfathered, most recently in 2008. Appeals can't be brought years after the administrative decision.

Second, the City's decision in 2008 (and in prior years) was well founded. We presented photographs and an affidavit showing that the parking spot was in use before the regulation was enacted and therefore is "grandfathered" and legal. We bought the building in 2004 and at that time we were told by the prior owner, Bill Wessel, that the parking space had been reviewed by the City and found to be grandfathered. Nevertheless the City raised this issue with us again soon after we purchased the property. We were told that the documentation customarily required to establish a grandfathered parking spot is photographs of the parking spot in use before the regulation was enacted and affidavits from someone with personal knowledge that the parking spot had been used. So we submitted photographs and an affidavit. And again the City agreed that the parking spot is grandfathered.

In November 2008, based on the photographs and affidavit we submitted, we received verbal confirmation from Jeanne Francis, Burlington Code Enforcement Officer, that the parking spot had been found to be grandfathered (again). We followed up with the City several times requesting a letter to this effect and a letter of determination was promised each time but we never received a letter. In frustration, I contacted City Attorney Ken Schatz. Ken suggested that if the City failed to issue a letter of determination, we should send a letter to the City documenting our understanding directly from the Code Enforcement Officer that the matter was resolved based on a finding that

the parking spot was grandfathered. I'm enclosing a copy of the letter we wrote in April 2009 to document that the matter had been resolved.

The City shouldn't have to revisit this matter every few years, and neither should we. It's clear the City has failed to maintain adequate records on this matter since before 2004. The lack of adequate record-keeping and documenting of decisions is the only reason the City has to revisit the matter whenever the parking spot is questioned by a member of the public.

Therefore, we respectfully request that (a) the appeal be denied as untimely and/or the City's decision that the parking spot is grandfathered and legal be upheld, and (b) the City issue a letter determination dated as of November 2008 to this effect, to document that this matter was resolved and to avoid future proceedings to revisit this matter.

All the best,

POCO Ventures



By: Christopher J. Cole
238 Spear Street
South Burlington, VT 05403

cc: City Councilor Ed Adrian
City Attorney Ken Schatz

RECEIVED

SEP 23 2011

DEPARTMENT OF
PLANNING & ZONING

POCO Ventures
P.O. Box 272
Hinesburg, VT 05461

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SEP 23 2011

DEPARTMENT OF
PLANNING & ZONING

April 4, 2009

Kenneth M. Lerner
Assistant Director of Planning & Zoning
City of Burlington
City Hall
149 Church Street
Burlington, Vermont 05401

RE: Parking Space at Residential Property Owned by POCO Ventures
384 North Street, Burlington

Dear Ken:

On November 3, 2008 I had a conversation with Jeanne Francis at Code Enforcement about a parking space at a residential property we own at 384 North Street, Burlington. Jeanne told me that the parking space is grandfathered and that you would be sending me a letter confirming that. We have not received any correspondence from you as of this date.

Code Enforcement has raised an issue about this parking space at least twice in the past, once when the property was owned by Bill Wessel and then again a couple of years ago after we purchased it. Each time, we (or Bill Wessel, when he owned the property) submitted documentation that the parking space is grandfathered, but we never received a written determination from Burlington Planning & Zoning. We are concerned this issue may be raised yet again in the future. So I am writing you to document the conversation I had with Jeanne and our resulting understanding that the parking space at 384 North Street indeed is grandfathered.

We would appreciate receiving a letter from your office documenting the resolution of this issue but in the meantime, this letter will serve as documentation of the conversation in the absence of a letter from your office.

All the best,

POCO Ventures

By: Christopher J. Cole

cc: Jeanne Francis, Burlington Code Enforcement Officer



Burlington Department of Planning and Zoning

149 Church Street, City Hall
Burlington, VT 05401-8415
www.ci.burlington.vt.us/planning

PH: 802-865-7188 FAX: 802-865-7195 TTY: 802-865-7142

RECEIVED
30 2011
DEPARTMENT OF
PLANNING & ZONING

Appeal of an Administrative Decision Request

Use this form to appeal any Administrative Decision or Notice of Violation - See Sec. 12.2.2 of the Zoning Ordinance.

SUBJECT LOCATION ADDRESS: 384 North Street ZONE: _____

Subject Property Owner: _____

Appellant: Caryn Long, Paul Bierman

Agent/Representative: _____

Mailing Address: 55 Henny Street

City, St, Zip: Burlington, VT 0540

Day Phone: 802-863-2056 Email: _____

Appellant Signature: Caryn Long Date: 8/30/11

In order for your request to be considered complete, the following information **must** be provided as applicable:

- ☒ The Appeal fee of \$135;
- ☒ Description of the decision under appeal; The determination that front yard parking is not enforceable.
- ☒ Description of the property subject to the appeal; Parking on N. Willard side
- ☐ Reference to the regulatory provisions applicable to the appeal;
- ☒ Relief requested by the appellant; Overturn decision to allow front yard parking
- ☐ Alleged grounds why such requested relief is believed proper under the circumstances.

Office Use Only:

Check No. CASH Amount Paid \$135.00 Zoning Permit # 12-080AP



CODE ENFORCEMENT OFFICE

645A Pine St, PO Box 849
Burlington, VT 05402-0849
VOICE (802) 863-0442
FAX: (802) 652-4221

August 15, 2011

Decision Date: August 15, 2011

CARYN LONG
55 HENRY STREET
BURLINGTON, VT 05401

RE: 384 NORTH STREET, BURLINGTON, VT
TAX LOT #045-1-065-000
ZV#: 216954

Dear CARYN,

This correspondence is in response to the August 3, 2011 complaint submitted to the Code Enforcement Office for the above property. The complaint concerned increased parking area without zoning approval. An investigation was undertaken in November 2008 that determined an identical complaint was unenforceable due to statutory time limitations, and thus the matter has been closed. No further action can be taken at this time.

Description of Complaint: Increased parking area without zoning approval.

Investigation Included:

- Review of Statute of Limitations
- Review of Aerial Photos
- Review of file documentation submitted in 2008 that supported the parking being in existence for over 15 consecutive years.
- Review of Code Enforcement files indicating Zoning Administrator's 2008 determination.
- Recent site visits to the property found parking consistent with that shown in the 2008 decision.

You have the right to appeal this decision regarding the inability of Code Enforcement to pursue an enforcement action for the increased parking area zoning violation, to the Development Review Board in accordance with the provisions of Articles 2.7.11 and 12.2.2 of the CDO, within fifteen (15) days from the date of decision. **The deadline for filing an appeal is 4 pm on August 30, 2011.** An appeal is not perfected until you submit a complete application and appropriate fee to the Department of Planning and Zoning located at 145 Church Street, Burlington, VT. The appeal shall be accompanied by the appropriate fee, a memo including the ZV#, your name and address, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to the appeal, the relief requested, and the alleged grounds why such relief is believed proper under the circumstances. *Failure to appeal constitutes admission that the violation exists, and the decision shall be binding 24 V.S.A §4472(d).*

If you have any questions, please call me at 802-863-0442.

Sincerely,

Jeanne Francis
Zoning Compliance Officer

1988 Aerial





Replace existing metal porch roof w/asphalt shingles.

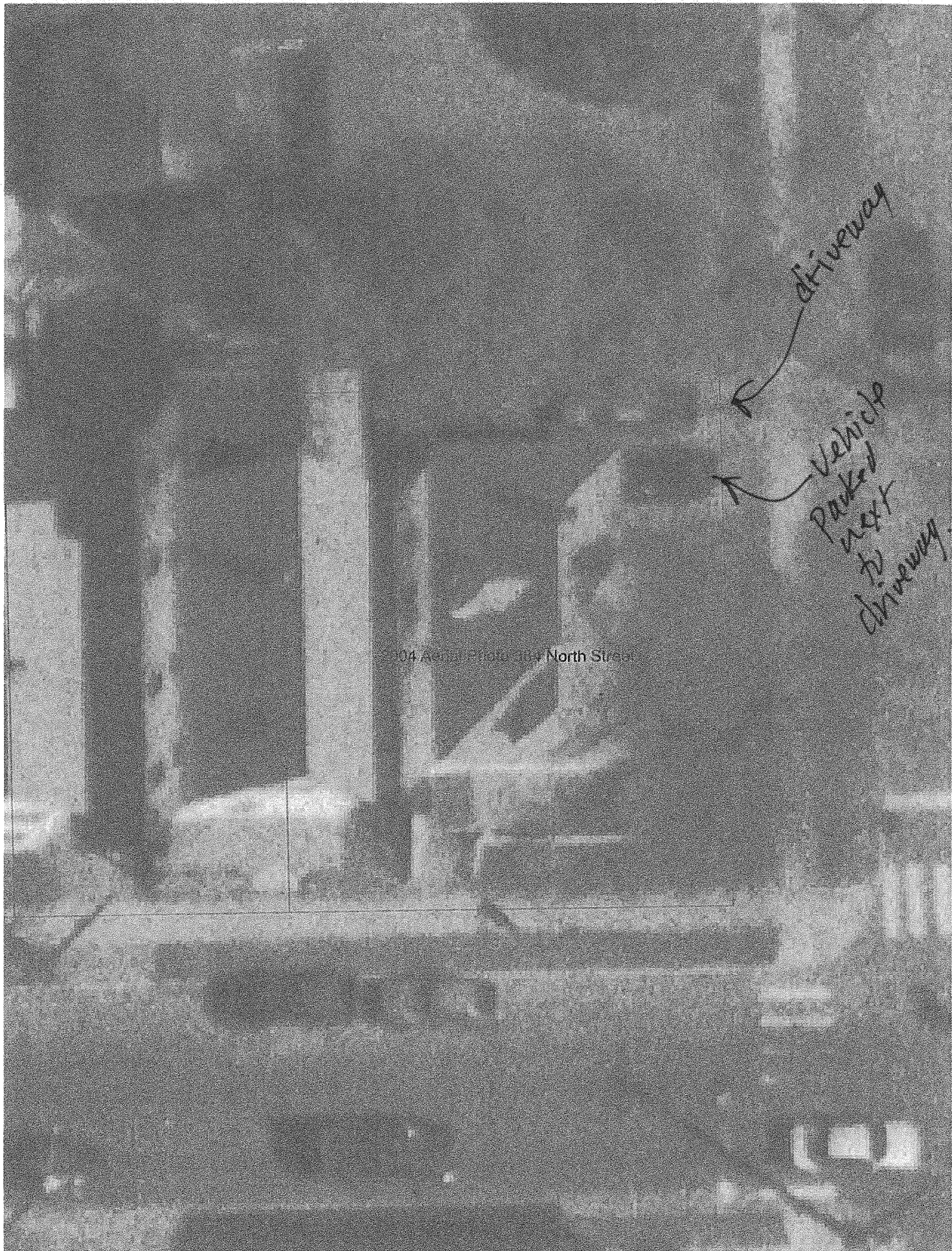
— NOTE —

ANY MODIFICATIONS OR DEVIATIONS FROM THESE PLANS
REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION.
ALL ERRORS IN DIMENSIONS, PLANS OR DETAILING ARE
FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.

FINAL APPROVAL

SIGNED H. D. M. DATE 8-5-02
PLANNING & ZONING DEPARTMENT
BURLINGTON, VERMONT

Note
vehicle
parked
in front
of house.



104 Aerial Photo 104 North Street

2004



2011



2011